

ARBITRATION DECISION - AWARD

IN RE

Winona School District ISD 861
Winona, Minnesota

and

BMS #06-PA-684

Winona Education Association

DISPUTE:

Refusal to hire teacher Joan Wickstrom for
assistant soccer coach position.

Arbitrator:
Daniel G. Jacobowski, Esq.
August 2, 2006

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JURISDICTION

APPEARANCES: For school district: Minneapolis Attorney Patricia A. Maloney of Ratwik, Roszak & Maloney.
For Education Association: St. Paul Attorney Debra M. Corhouse of Education Minnesota.

HEARINGS: Conducted on June 20 and 21, 2006, at the district Lincoln Building in Winona, on this contract grievance, pursuant to the stipulations and procedures of the parties under their collective bargaining agreement. Briefs were received July 7.

DISPUTE

ISSUE: Did the district violate the contract when it refused to hire teacher grievant Joan Wickstrom for an assistant soccer coach position?

CASE SYNOPSIS: The grievant is a teacher in the district and an experienced soccer coach. In August 2005, the athletic director refused to hire her as assistant soccer coach and instead hired a person outside the bargaining unit. The refusal was based on past parent complaints of her during her prior years as soccer coach, from which she had been pressured to resign in June 2004. The grievant protests that she is qualified, that the determination of not qualified was wrongful, and in violation of contract section 13 which entitled her to the position.

CONTRACT PROVISIONS APPLICABLE OR ARGUED:

ARTICLE VI - TEACHER RIGHTS

"Section 3. Personnel Files:...Only the permanent personnel file may be used as evidence in any disciplinary action or hearing....

Section 13. Subcontracting: All curricular, co-curricular, and extra-curricular assignments normally conducted by members of the bargaining unit shall be retained within the unit, and the district shall not employ, assign, or contract with any person outside of the bargaining unit to perform such assignment(s) unless no qualified teacher is available within the bargaining unit to accept such assignment(s).

Section 16. Just Cause: No tenured teacher shall be disciplined or denied a scheduled salary increase or deprived of any professional advantage without just cause. Any such denial or discipline shall be subject to the professional grievance procedure set forth in this contract. All information forming the basis for disciplinary action will be made available to the teacher and upon written consent of the teacher involved to the exclusive representative.

Section 21. Maintenance of Standards: This contract shall not be interpreted or applied to deprive teachers of professional advantage or to modify the working conditions heretofore specifically enjoyed unless expressly stated herein. Nor shall it be interpreted or applied to deprive the district of any of the services of the teachers heretofore enjoyed unless expressly stated in this contract."

DISTRICT POLICY:

CONFLICT RESOLUTION PROCESS

(Arbitrator comment: To help resolve parent or student concerns or conflicts.)

"Steps for Conflict Resolution

Step One: Student or parent concerns - a meeting with the coach/advisor.

Step Two: If not resolved, a meeting with the activities director.

Step Three: If not resolved, a meeting with the building principal.

Step Four: If not resolved, referral to the superintendent."

BACKGROUND - FACTS

Earlier this hearing was scheduled for April 11, 2006, but postponed late on April 10 for a settlement possibility. Later after rescheduling, on June 7 the arbitrator heard both counsel

on the union motion to preclude certain district testimony and evidence of complaints that had not been processed through the district conflict resolution policy or which were in the athletic director's notes and not in the grievant teacher's personnel file. Upon review, the motion was denied.

The grievant is a licensed math teacher with the district. In 1998 she was assistant soccer coach for one year and thereafter head soccer coach for five years through 1993. During the years some parent concerns and complaints had been made about her coaching. Some were communicated to the athletic director. On June 2, 2004 the director was called to a meeting of several parents lead by a leading complainer, KM, at which various complaints were made of the grievant from the last 2003 soccer season and prior years. This triggered the director to immediately confront the grievant with a list of the complaints and demanding her resignation or face non-renewal of her coach position. She resigned. A year later in July 2005 she applied for an assistant soccer coach position, but was denied on the basis of the past complaints.

The school district case. Notes of the June 2, 2004 meeting were separately kept by leader KM and by the director. Four parents attended, KM, a Mrs. KZ, and two who wished to remain anonymous. Some of the complaints noted included the following. The anonymous parent (S) complained of verbal abuse to their daughter on the team, citing a September 2003 game when she wasn't allowed to play varsity and was driven home by the grievant in her own vehicle. Another anonymous complaint was that the grievant failed to adequately allow Hmong players to play varsity. Mrs. KZ had several complaints against the grievant, that she was inconsiderate towards the daughter in her team assignments during a particular sensitive time when the husband was dying, that after the daughter left the team the grievant prevented her from assisting with the middle school program and that in 2002 the grievant failed proper concern when the daughter had injured her hand. Other past complaints were also noted.

The district produced three witnesses at the hearing regarding the complaints of the grievant coaching. Parent leader KM had two daughters who played soccer. He himself had soccer experience elsewhere. His complaints of the grievant went back to her first year as head coach. His complaints included that she showed favoritism to her own two daughters who played soccer. That she didn't give more playing experience to more of the players. That he felt she didn't have sufficient training. He met with her several times with his complaints, particularly about giving more playing time to seniors.

Mrs. KZ, who also attended the June 2004 meeting, also testified. She related of a prior year when she felt the grievant was unsympathetic and inattentive when her daughter had injured her hand during a game. She also mentioned that in the '03 season her husband was dying, which produced a lot of difficulty on the

daughter and the grievant failed to show her proper consideration to allow her to play and during her husband's last game attendance. When the daughter later quit the team and wanted to help out at the middle school team, the grievant opposed that effort. She had both telephoned and written a letter to the grievant with some of her concerns and was not satisfied with the grievant's response on the telephone and lack of response to the letter.

In his testimony, the athletic director noted that he has been in that position since 1999, the same year the grievant started as head soccer coach. He noted the various guidelines and ethical codes that are submitted to the coaches, parents and students to observe, including the emphasis on the district conflict resolution policy, which noted that the playing time of students should not be a focus of discussion. He noted that in 2000 some parents wanted to conduct a survey of the soccer program and the head coach but that it was not allowed. He made reference to notes of his own that he kept in his personal file. In 2002 a parent complained of an occasion when the grievant visited a player at her place of employment about her failure to attend soccer meetings. He confronted the grievant on this complaint, she admitted it was wrong and he had her apologize to the daughter, feeling the matter was thus resolved. In the fall of 2003, parent KM complained to him of the grievant about her yelling and other concerns. He stated that he supported the grievant on that occasion. He stated others had talked to him but wanted to remain anonymous. He stated the district has no policy against coaches teaching their own children. In October of 2003 a school social worker informed him of some Hmong parents' concern and humiliation that their children students didn't get sufficient opportunity to play. He related of the June 2, 2004 meeting with parents who wanted the grievant removed. When he met with the grievant as a result, he stated that she denied the accusations, gave no explanation and when he asked her to resign or face non-renewal, she expressed being hurt, angry, and just walked out. She resigned shortly after. He stated that the primary reasons and concerns of the grievant included the following matters, her going to the place of employment of a student, the complaints of the Hmong, verbal abuse and communication difficulties with the parents, her difficulty with problem solving and defensiveness, which made her unqualified for the assistant soccer coach position. On cross exam, the director admitted that other coaches coached their own children. That trainers when available are the first attendees to injuries. That there is a preference if new teachers are hired that they have some coaching skills. That most coaches get occasional complaints, most of which involve playing time.

The association-grievant case. The grievant listed her extensive soccer experience in addition to her coaching at the senior high. From 1994 she had 7 years as head soccer coach for the YMCA. From 1995 she had 11 years as head coach for the Winona Youth

Soccer Association. She has attended an extensive number of soccer coaching clinics, and attendance for 8 years at the USA Cup Tournament. She has three daughters active in soccer. In her testimony she said she has never been disciplined. She stated that when she applied for the assistant coach position no questions were asked about the prior complaints. She furnished four testimonial letters on her behalf from parents and another.

When the director met with her and gave her the ultimatum to resign or face non-renewal, it came as a total shock without warning. She had not been aware of and did not participate in his meeting with the parents group initiated by KM. In listing some of their complaints, a number of them she had not been aware of. When she wanted to discuss them she stated the director refused and was angry. She did not want to resign but became so upset and walked out. Two days later she resigned but wanted a discussion on the matter which the director refused. Several days later she recanted and wanted further discussion but to no avail.

The grievant gave extensive testimony on her experience with an explanation of past complaints and concerns. She recognized the value of the conflict resolution policy in resolving a number of matters. One was a complaining parent who had his daughter apologize after hearing the coach's explanation. She explained the incident when she talked to a student at her place of employment as a grocery checkout girl, stating she had done so because the student had a history of missing practices with no explanation. When the director received a call from the mother and told the grievant to apologize, she did so and felt the matter was resolved. She felt she had a good relationship with the director and many times discussed concerns with him and kept him informed.

In August 2003 KM met with her expressing concerns of him and others regarding her coaching. His daughter played soccer. She had heard he was trying to drum up complaints against her. In October she again met with him at the direction of the director when he indicated he didn't want her to coach anymore. The matter with him was unresolved.

She explained how students are assigned for games and playing based upon their experience, skills, with flexible rotation between junior varsity and varsity. She also explained that she has had no other complaints about how she has handled injuries. Trainers are available for home games to be alert and handle injuries.

With respect to the complaints of Mrs. KZ how daughter was handled during the period her husband was dying, the grievant recognized the emotional difficulty involved. On the complaint that the daughter did not play varsity on the last game her husband attended she was not aware he was there and no request had been made of her. While the daughter wanted to play varsity

more, the grievant rotated her with more junior varsity time where she could get more playing opportunities. After the daughter quit the soccer team but wanted to help at the middle school team, the grievant said no based on her policy that it was better to have older students or persons working with those younger. The grievant related of the long half hour phone call from the mother over these matters, was very apologetic with the emotional situation.

Regarding another parent complaint how their daughter had been treated, the grievant explained that the bus was full for an out of town trip and with approval of the director it was decided that she should drive with some students in her own vehicle which was new. She didn't have the daughter start the game because of her conduct but then did later have her play. Regarding the complaint of not giving enough play time to Hmong students, this is the first time she's heard of such complaint. They made extensive effort to make the Hmong feel welcome. Two were seniors but had never played soccer before, so they didn't play all of the games. The girls appeared to be very happy and grateful for the opportunity to play. She had mentioned them to the director and he appeared satisfied with how she handled it. On a complaint of some parents that they were not invited to the players' pizza party instead of a banquet, she stated that the type of party varied from year to year, that this was the preference of the students that year and that parents who wished to come anyway were allowed to do so. She admitted that there are occasions when coaches get angry and yell, but that she has never done so in an unreasonable and unfair manner.

The teacher who had been assistant soccer coach to the grievant gave testimony on her behalf. He recalled a meeting with parent leader KM who stated he would do everything in his power that the grievant would never coach again. He said he was representing others and was very emotionally charged. He was appalled at the accusations made and felt the grievant was completely the opposite in handling and caring for the students. He concurred with the handling of the Hmong students in soccer and thought they understood and were happy with the playing time given in spite of their marginal skills. He testified on behalf of the grievant on several matters.

One of the parents who submitted a testimonial letter for the grievant testified that she was a very good coach, handled her own daughter very well and showed no favoritism to her own daughters whom she felt she was even harder on.

The head of the math department also testified stating that the grievant's teaching ability is very good. He himself has been involved with girls basketball coaching for many years. First as head coach and then many years since as assistant coach. He explained that back in 1990 he had been asked to resign as head coach because of parent complaints that he was too hard on the girls, too intent on winning and yelled too much and showed

favoritism to his own daughter. Later in another year he applied as assistant coach and was successful. He explained the difference in philosophies between balancing opportunities for players to play as against balancing that with flexibility between players to allow winning.

In addition to this grievance over the district's failure to hire the grievant, the association filed a separate grievance over the district failure to follow the conflict resolution policy. The grievance was sustained and the district agreed to follow the policy in the future with the following directives from the superintendent to the athletic director. On September 28, 2005 the superintendent noted to the director that the conflict resolution process may not have been followed in an instance involving the grievant. He was advised that this process be followed at all times and that once a parent concerns arise it is important to schedule a meeting with the concerned parties and the coach. In a follow-up October 13 letter the superintendent further advised the athletic director that anonymous complaints are not to be used as a part of a hiring decision. The fact of this grievance settlement and these September and October 2005 directives to the athletic director are supportive of the grievant in the current dispute matter.

ARGUMENT

THE SCHOOL DISTRICT: In brief summary, the district argued the following main points in support of its decision. 1. The district has retained the discretion under the contract to determine whether a teacher is "qualified" to serve as a coach. Section 13 allows the district to hire outside the unit if no "qualified" teacher is available. The extensive testimony adequately determined the grievant was not qualified. The union argument that she was qualified and that the term qualified only means that an applicant has a teaching license is illogical. If so, there would be no need to use the term "qualified" since by definition any teacher means one with a license and any teacher would then be deemed qualified even if no ability or skill for coaching. Again such argument by the union is illogical. 2. The district acted reasonably and within its discretion in determining that the grievant lacked the qualifications for the assistant coaching position. The district had a reasonable basis to so conclude. The hearing adequately demonstrated the examples where the grievant had been made aware of parents' concerns but failed to take necessary steps to resolve the situations. The evidence demonstrated students were afraid to voice concern and feared grievant retaliation, that the grievant showed consistent lack of skills in dealing with parents and students and that the grievant did not accept criticisms or suggestion for change. There was adequate evidence to support the reasonable basis that the grievant was not qualified for the assistant soccer coach position. 3. Respectfully, the grievance should be denied.

THE ASSOCIATION-GRIEVANT: In brief summary, the following are the main points of the association on behalf of the grievant, that she was entitled to the position. 1. As a matter of law, the grievant is a qualified teacher and should therefore be hired as the assistant soccer coach before someone from outside of the bargaining unit. By law a qualified teacher is one with a license. All the contract requires is that she be a qualified teacher, and she is so. 2. The contract language requires the preferential hiring of internal candidates. If the district were allowed discretion, the language would be meaningless. 3. The district has waived its right to hire the coach of its choice when a qualified teacher applies. The language prohibits the selection of an outside candidate when there is a qualified teacher applicant. There are good reasons to provide preferential hiring for qualified teachers. 4. In the only past case in evidence, the district considered a former head coach qualified for an assistant coach position, even after he had been asked to resign as head coach under parental pressure. The assistant coach does not have the same responsibilities and decisions as does the head coach. 5. Even if the arbitrator reads the language to allow for district discretion in the hiring of coaches, it must follow the principles of just cause to deny the grievant a professional advantage. Sections 16 and 21 of the contract so provide. A coaching position is a professional advantage. The director testified he would prefer new teachers have coaching experience. 6. The district failed to meet the tests of just cause. The director failed to fairly investigate, simply accepted the accusations, and failed to get information from the grievant and other coaches. The grievant was given no notice of expectations and possible consequences. The district was not even handed in the penalty, having previously allowed another resigning coach to return as assistant, and it gave no prior warning or lesser discipline to the grievant. 7. Even if abuse of discretion were to be the proper standard of review, the district did abuse its discretion. The athletic director did not facilitate the conflict resolution process. KM was so intent on her not coaching that she couldn't resolve an issue with him. The interview process for the assistant coach position was unfair with the members predisposed towards not hiring her. The grievant has a series of parents who support her as coach. The director considered past resolved issues in making his decision. Parent leader KM's complaints lack merit considering his own personal agenda against the grievant and his lack of standing on other matters compared with her explanations. The grievant gave adequate credible testimony in explanation of her response to the complaints of Mrs. KZ. The grievant gave credible explanations in responding and explaining the situations regarding Hmong players, the parents not being invited to the end season party, her use of the vehicle in lieu of the full bus and her yelling. 8. As was argued in the preliminary motion hearing, the arbitrator should not consider most of the evidence the district offered in support of its decision not to hire the grievant. The district conflict resolution policy was not followed in many instances. The separate grievance and settlement over the

conflict resolution policy resulted in the admonition by the superintendent to the director to follow the process at all times and to not use anonymous complaints as part of hiring decisions. The director's notes were not part of the formal teacher's file and therefore should have been excluded, as well as the related testimony. 9. Respectfully, since the grievant is a qualified teacher under the contract, she should be assigned to an assistant coach position at the high school for 2006 and be awarded back pay for the 2005 season.

DISCUSSION - ANALYSIS

Upon extensive review, I concur partially with the district that it had has the right to evaluate and determine the qualifications of the grievant for the position, but that it acted wrongfully and did not have a proper basis to determine that she was not qualified and that it violated her right of entitlement to the assistant soccer coach position. I so conclude based on the following reasons and factors.

1. I concur with the district that under section 13 it has the right to evaluate and determine the qualifications of a teacher in the customary usage of the term, beyond the fact of a license. I reject the union claim that it is restricted to a teacher being licensed. To so conclude as the union argued is unreasonable and ludicrous since the very definition of a teacher in the contract already requires a license and the reference to qualified would be unnecessary and meaningless. By the union argument, any teacher would thus be qualified even one who lacked the necessary skills and knowledge to be a soccer coach.

2. I likewise concur with the district that this is not a discipline case as such. I therefore reject the union's argument that just cause for a discipline is applicable and that only evidence from the permanent personnel file may be used. Incidentally, there was no such related evidence in the grievant's file. Accordingly, I have rejected the union claim of evidence that should be excluded since that would preclude practically all of the evidence of the complaints and circumstances in this case. To the contrary, I have allowed such evidence of the complaints and accusations to be submitted on the recognition that they form the basis for the district action and the director's decisions, aside from their validity and merit.

3. However, I do find in favor of the grievant that the determination of being not qualified did deprive her of a professional advantage without just cause and in violation of sections 16 and 21 of the contract under teacher rights. The position of the assistant soccer coach is a professional advantage and her right as a teacher to it and to fair consideration for it is an entitlement under the contract.

4. In getting to the main substance and merits of this case, I have concluded that the district was wrongful in determining that

she was not qualified based on the prior complaints and in denying her the position to which she was entitled. My reasons next follow.

5. The basis of her earlier coaching termination upon the forced resignation or non-renewal was appalling and unfair. She was not advised of it and did not participate in the June 2, 2004 meeting with the small parent group. She was not given an opportunity to respond to the accusations. Instead it immediately triggered the director to act on her removal.

6. The evidence is clear that the director failed to follow the conflict resolution process not only with respect to the June 2 meeting but with respect to other prior occasions when complaints or concerns had been made to him.

7. I find that the testimony and complaint of parent leader KM is to be discounted because of his indicated bias and personal agenda to get rid of the grievant, his disagreement with the coaching philosophy, and his efforts to initiate and consolidate complaints of other parents.

8. In the case of Mrs. KZ, with her complaints or concerns, it is clear that she and her daughter were under tremendous emotional distress during the period of her dying husband, and the grievant gave reasonable explanation of the circumstances to discount the complaints.

9. On practically all of the other complaints or accusations raised, the grievant gave a reasonable explanation or response to discount the justifications or accusations made. In addition, a number of these matters were from prior years or not made known to the grievant as complaints at the time.

To include these above listed matters and other similarly raised at the hearing, are totally unfair to the grievant and do not constitute good reasons to determine she was not qualified.

10. It is otherwise clear that the grievant had exceptional skills and experience and training in soccer coaching.

11. It is also noted that the duties of the assistant soccer coach, are less than that of head coach.

DECISION - AWARD

DECISION: The district did act wrongfully and violated the contract in denying the grievant the assistant soccer coach position.

AWARD: The grievant is to be offered the position for the forthcoming 2006 season and to be granted back pay for the lost earnings of the position from the last 2005 season.

Dated: August 2, 2006

Submitted by:

Daniel G. Jacobowski, Esq.
Arbitrator